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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD RAYNARD LEWIS,

Defendant and Appellant.

B217677

(Los Angeles County
Super. Ct. No. VA110024)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Michael L. Schurr, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon and Sharlene A. Honnaka, for Plaintiff and Respondent.

Gerald Raynard Lewis appeals from the judgment following the trial court's denial of his motion to suppress illegal drugs found on him. We affirm.

FACTS AND PROCEEDINGS

On April 1, 2009, Los Angeles County Sheriff's Deputy Jason Molina and his partner pulled a car over for a traffic stop. Appellant Gerald Raynard Lewis was sitting in the car's front passenger seat. Deputy Molina saw a "darkish brown" inch-long screw-top glass vial on appellant's lap. Based on his training and experience, Deputy Molina suspected the vial might contain PCP. Deputy Molina directed appellant to step out of the car. As appellant got out, the vial fell onto the front seat. Deputy Molina picked up the vial and, without unscrewing its cap, smelled PCP. The deputy asked appellant what was in the vial; appellant answered PCP.¹ Deputy Molina arrested appellant and, while searching him, found rock cocaine in his shirt pocket.

The People filed an information charging appellant with possession of cocaine base and phencyclidine (PCP). The information alleged appellant had suffered multiple prior prison terms and convictions. Appellant pleaded not guilty and moved to suppress the deputy's seizure of the vial and cocaine. The trial court denied the motion to suppress. A jury thereafter convicted appellant as charged. The court sentenced appellant to five years in state prison. This appeal followed.

DISCUSSION

Appellant contends the trial court erred in denying his motion to suppress. We disagree.

The parties agree Deputy Molina's seizure of the brown vial – and the attendant seizure of the cocaine following appellant's arrest – was lawful if the plain view exception to a warrantless search permitted the deputy's confiscation of the vial.

¹ Deputy Molina's question and appellant's answer were admitted into evidence on the motion to suppress, but the trial court suppressed the question and answer at appellant's later jury trial.

(*Minnesota v. Dickerson* (1993) 508 U.S. 366, 374-377 [police may seize contraband or evidence of crime in plain sight].) The plain view exception applies when a peace officer can see and obtain from a lawful vantage point an item with an “immediately apparent” incriminating nature without needing to inspect or search the object. (*Horton v. California* (1990) 496 U.S. 128, 136 [“not only must the item be in plain view; its incriminating character must also be ‘immediately apparent.’ ”]; see generally *Minnesota v. Dickerson*, *supra*.) Appellant concedes the deputy could lawfully see and access the vial during the traffic stop. Appellant contends, however, that the vial’s illegal nature was not immediately apparent, and therefore the plain view exception did not apply. In denying appellant’s motion to suppress, the trial court implicitly held otherwise.

We review the trial court’s factual findings for substantial evidence. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597; *People v. Lawler* (1973) 9 Cal.3d 156, 160.) Accepting those factual findings, we independently review the seizure’s constitutional reasonableness. (*People v. Maury* (2003) 30 Cal.4th 342, 384; *People v. Loewen* (1983) 35 Cal.3d 117, 123.) Appellant asserts the vial was a common, everyday object akin to a prescription drug bottle, pack of cigarettes, or baggie, any of which might contain contraband, but by themselves are not sufficiently distinctive to arouse reasonable suspicions sufficient to justify their seizure. Appellant’s contention is unavailing because the test is not whether the vial appeared, without further inspection, to be *indisputably* illegal. (*Texas v. Brown* (1983) 460 U.S. 730, 742-744 [officer need not be certain of seized object’s illegality].) The test is whether, without further inspection of the vial, the deputy reasonably believed it might contain contraband such as PCP. The test of the constitutional reasonableness of a search or seizure “is a flexible, common-sense standard. It merely requires that the facts available to the officer would ‘warrant a man of reasonable caution in the belief,’ that certain items may be contraband . . . or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A ‘practical, nontechnical’ probability that incriminating evidence is involved is all that is required.” (*Id.* at p. 742) “Whether a common container constitutes a suspicious circumstance capable of contributing to a totality of

circumstances necessary for probable cause depends on the total factual context in which the container is observed, including the prior experience of the observing officer with containers of the sort at issue.” (*People v. Holt* (1989) 212 Cal.App.3d 1200, 1205.)

Here, Deputy Molina testified about his training and experience in identifying illegal drugs. He had been a deputy for ten years and received 80 hours of narcotics education at the sheriff’s training academy and ten hours of narcotics training for patrol. He has had hundreds of contacts with drug users and sellers. He has been the arresting deputy in two cases involving PCP and assisted in ten other PCP arrests. Based on his training and experience, he suspected the vial might contain PCP.

Appellant notes deputy Molina admitted that neither the driver nor appellant appeared to be under the influence of drugs and the deputy did not smell PCP until he picked up the vial. Appellant also notes Molina has never testified as an expert in a narcotics case, and, according to appellant, the dozen PCP arrests in which Molina has participated are insufficient experience for him to reliably identify the vial as containing PCP. Appellant’s assertions about the deputy’s purported inexperience create conflicts in the evidence which go, however, to the weight of Molina’s testimony that he believed the vial might contain PCP. Weighing all the factors, the trial court concluded the deputy reasonably suspected the vial might contain PCP. We agree, and therefore hold the deputy’s seizure of the vial was constitutionally reasonable under the plain view doctrine.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.